FILE

In the Supreme Court of the United States

INDEX

	Page
Opinion Below	2
Jurisdiction	2
Questions Presented	3
Constitution and Statutes Involved	7
Statement of Facts	8
Proceedings Below	9
Reasons for Granting Writ	9
Conclusion	13

CASES CITED

Church of Jesus Christ of Latter-day Saints v. United States, 136 U.S. 1, 34 L. Ed. 481, 140 U.S. 665, 35 L. Ed. 592	11
Dartmouth College v. Woodman, 4 Wheat (U.S.) 518, 4 L. Ed. 629	12
United States v. Church, 6 Utah 43	11
United States v. Church, 8 Utah 310	11
United States v. Church of Jesus Christ of Latter-day Saints, 150 U.S. 145, 37 L. Ed. 1033	11
United States v. Mississippi Valley Generating Co., No. 26, decided in October Term, 1960, on January 9, 1961, not yet reported	12
United States v. The Sole Corporation, The Church of Jesus Christ of Latter-day Saints, et al., 5 Utah 361	11

Page

CONSTITUTION AND STATUTES

Fifth Amendment to the Constitution of the United States 7

Article I, Section 4, Constitution of Utah 7

Article I, Section 7, Constitution of Utah 7

Article I, Section 22, Constitution of Utah 8

Article XII, Section 10, Constitution of Utah 7

United States Code: 28 U.S.C. Sec. 257(3) 2

Utah Code Anotated, 1953: 10-6-38 8

16-7-1 8

16-7-6 8

TEXT BOOK

Dillon on Municipal Corporations, Vol. 2, Sec. 773, Page 1143 12

No.

In the Supreme Court of the United States

October Term, 1961

JESSE B. STONE, LYNN FAUSETT and FIAMETTA FAUSETT,

Petitioners,

v.

SALT LAKE CITY, a municipal corporation; J. BRACKEN LEE, JOE L. CHRISTENSON, L. C. ROMNEY, T. I. GEURTS and J. K. PIERCEY, its Commissioners; CHAMBER OF COMMERCE OF SALT LAKE CITY, and GUS P. BACKMAN, its Secretary; ZIONS SECURITIES CORPORATION, a corporation; and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation sole,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

Petitioners pray that a Writ of Certiorari issue to review the Judgment of the Supreme Court of Utah affirming a Judgment of the Third District Court of Salt Lake County, Utah, wherein such District Court dismissed the First Cause of Action alleged in plaintiff's Complaint. That such dismissal by such District Court and the affirmance thereof by the Supreme Court of Utah was and is in violation of that provision of the Fifth Amendment to the Constitution of the United States, which provides that:

"No person shall be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation."

OPINION BELOW

The opinion of the Supreme Court of Utah is reported in 356 Pac. (2d) 631, but is not yet reported in the Utah Reports. A copy of such Opinion is attached to this Petition as Appendix A.

JURISDICTION

The Judgment of the Supreme Court of Utah was entered on November 2, 1960, and a Petition for Rehearing making such Judgment final was denied on December 28, 1960. The jurisdiction of this Court is invoked under *28 U.S. Code Sec. 1257(3)*. Petitioners claim that such Judgment of the Supreme Court of Utah offends against the Fifth Amendment of the Constitution of the United States, in that it improperly construed that provision of the Articles of Incorporation of Respondent The Corporation of the President of the Church of Jesus Christ of Latter-day Saints, a corporation sole, which provides that:

> "It may acquire, hold and dispose of such real and personal property as may be conveyed to or acquired by it for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society for the benefit of religion, for works of charity and for public worship."

That such Judgment of the Supreme Court of Utah also offends against the following provisions of the Constitution of Utah:

Sections 1, 7 and 22 of Article I, and Section 10 of Article XII of the Constitution of Utah; and

Section 16-7-1; 16-7-6, and 10-6-38 of Utah Code Annotated, 1953, which are hereinafter quoted.

That by such Judgment the Court found, as a fact without any evidence to support the same, that the Respondent Corporation of the President of the Church of Jesus Christ of Latter-day Saints may lawfully and without considering the interest of the beneficiaries give several hundred thousand dollars of the trust fund held by such Corporation Sole for the purchase of a site for a building for the United States. For the Respondent Corporation Sole to so dispose of a substantial amount of the trust fund held by it for the benefit of the members of said Church of Jesus Christ of Latter-day Saints, will offend against the Fifth Amendment to the Constitution of the United States, in that, it will be a taking of private property without due process of law and without compensation in a manner contrary to the applicable decisions of this Court (and the courts generally), all of which is more fully set forth hereinafter in this Petition.

QUESTIONS PRESENTED

1. May the Respondent Corporation of the President of the Church of Jesus Christ of Latter-day Saints, a corporation sole, which owns all of the stock of and controls and operates Respondent Zions Securities Corporation, a corporation, lawfully dispose of the trust fund which is held in trust for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, "for the benefit of religion, for works of charity, and for public worship," for the purchase of a site for a building for the United States?

2. May the General Services Administrator of the United States, having knowledge that property and money is held in

trust by the Respondent Zions Securities Corporation for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, exact and accept, several hundred thousand dollars in value of such property and money so held in trust, for securing a site for a building for the United States?

3. May the members of the City Commission of Salt Lake City, who are also the beneficiaries of the trust fund held by the Respondent President of the Church of Jesus Christ of Latter-day Saints and Zions Securities Corporation lawfully enter into a contract whereby property so held in trust is to be sold by such City to such trustees with the understanding that the same shall be conveyed by such trustee to the United States as a site for a building for the United States?

4. May the courts of Utah make Findings of Fact without evidence to support such findings on matters of controlling importance without offending against that provision of the Fifth Amendment to the Constitution of the United States, which requires that:

> "No person shall be deprived of his property without due process of law or without compensation."

It is in substance, among other matters, alleged in the pleadings that the Petitioners are interested in the trust fund held by the Corporation of Respondent Corporation of the President. (R. 0001 and 0033.) That the Corporation of the President of the Church of Jesus Christ of Latter-day Saints, as stated in its Articles of Incorporation, is to acquire, hold and dispose of its property held by it for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, for the benefit of religion, for works of charity and for public worship. (R. 0002.)

That the bid made for the purchase of the City property was made without authority from Respondent Chamber of Commerce by Gus P. Backman, its Secretary, at the solicitation of Respondent Corporation of the President of the Church of Jesus Christ of Latter-day Saints, and its agent and owned defendant Zions Securities Corporation. (R. 0005.)

That if the plan agreed upon is carried out for the furnishing a site for a Federal Building, it will be necessary for the Corporation of the President of the Church of Jesus Christ of Latter-day Saints, and its owned defendant Zions Securities Corporation, to advance for the purchase of a site upon which to erect a Federal Building several hundred thousand dollars, and that an agreement to do so is null and void. (R. 0006.)

That defendants Corporation of the President and Zions Securities already have acquired another site for such purpose. (R. 0006.)

That such defendants are without right to use the trust funds held by them for such purpose. (R. 0006.)

That the use of the property so held in trust for the purchase of a Federal Building will result in depriving the beneficiaries of their right in the trust fund held by the Corporation of the President without due process of law and without just compensation, contrary to the Fifth Amendment of the Constitution of the United States. (R. 0007.)

That one of the cardinal principles of the Church of Jesus Christ of Latter-day Saints is that its members shall comply with the announced desires of the leaders of that Church, and particularly the desires of its President and Counselors. That when it became known that the President of such Church desired to purchase the City property, the City proceeded to attempt

to sell the same to said Zions Securities Corporation. (R. 0008-9.)

That the property sought to be sold by the City has for a number of years been devoted to furnishing officers and employees of defendant City a place in which to perform the governmental functions of the City, and that no provision has been made for supplying facilities for such use. (R. 0009.) Notwithstanding such and similar allegations of the Complaint the Third District Court of Salt Lake City granted Motions to Dismiss the Complaint, and thereby petitioners herein were prevented from producing evidence in support of their allegations. Upon appeal the Supreme Court affirmed the judgment of Dismissal and contrary to the allegations of the complaint, and without any evidence to support its opinion, found a number of facts of controlling importance, such as, plaintiff does not claim that there was any express trust or any condition or restriction placed upon the funds he contributed to the Church . . . and the donor has no right to retain, control, or direct the manner in which the money so given shall be used merely because he has made such contribution to the Church, or because he is a member of the class which may be benefited by the carrying out of its purpose. That such ruling of the Third District Court of Salt Lake County and the Supreme Court of Utah were so made without due process of law and will, if carried out, deprive petitioners of their property without compensation, contrary to the provisions of the Fifth Amendment to the Constitution of the United States.

5. In light of the fact that the Articles of Incorporation of Respondent Corporation of the President and the Constitution and laws of Utah which provide for the powers that may be exercised by such corporation, may Respondent Corporation of the President lawfully devote the funds entrusted to it for any

purpose other than that provided for by law and by its Articles of Incorporation, contrary to and in violation of the Fifth Amendment of the Constitution of the United States?

6. May Mr. Franklin G. Floete, Administrator of the General Services Administration of the United States, or any other officer or agent of the United States, lawfully use the money appropriated for a Federal Building at Salt Lake City to purchase and construct a building while there is pending a suit attacking the validity of the transactions whereby title to the property upon which the building is to be constructed?

CONSTITUTION AND STATUTES INVOLVED

Article XII, Section 10, of the Constitution of Utah provides:

> "No corporation shall engage in any business other than that expressly authorized in its Articles of Incorporation."

Fifth Amendment of the Constitution of the United States which provides:

> "No person shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation."

Article I, Section 4, of the Constitution of Utah, which provides:

> "There shall be no union of church and state nor shall any church dominate the state or interfere with its functions."

Article I, Section 7, of the Constitution of Utah, which provides:

> "No person shall be deprived of life, liberty or property without due process of law."

Article I, Section 22, of the Constitution of Utah, which provides:

> "Private property shall not be taken or damaged for public use without just compensation."

Utah Code Annotated, 1953, 16-7-1, which provides:

> "Corporations sole may be formed for acquiring, holding or disposing of church or religious society property for the benefit of religion, for works of charity and for public worship in the manner hereinafter provided."

Utah Code Annotated, 1953, 16-7-6, provides in part:

> "Corporation sole . . . shall have power:
>
> 1. To acquire and possess, by donation, gift, bequest, devise or purchase, and to hold and maintain, property, real, personal and mixed, and to grant, sell, convey, rent or otherwise dispose of the same as may be necessary to carry on or promote the objects of the corporation."

Utah Code Annotated, 1953, 10-6-38, in part provides:

> "No officer of any municipal corporation shall be directly or indirectly interested in any contract . . . (made by the municipality). Any violation of the provisions of this Section shall be a misdemeanor and every such contract or agreement shall be void."

STATEMENT OF FACTS

In light of the Judgment of the Third District Court of Salt Lake County, Utah, dismissing the First Cause of Action alleged in the Complaint without giving plaintiff leave to offer any evidence in support of such allegations, or without leave to amend the Complaint, and without giving the Fausetts leave to intervene, and such Judgment having been affirmed by the Supreme Court of Utah, it follows that the allegations of the

facts contained in the pleadings of the Petitioners herein are true. To hold otherwise deprives the Petitioners herein of due process of law. It will be observed from a reading of the opinion of the Supreme Court of Utah that it does not hold that the pleadings are fatally defective, but, on the contrary, bases its conclusions upon facts found by it without any evidence to support the same. That being so, the Petitioners have been deprived of their property without due process of law.

PROCEEDINGS BELOW

The Petitioners herein raised the questions which they here seek to have reviewed by this Court by allegations in their pleadings in the Third District Court of Salt Lake County, Utah, (R. 0001 to 0010):

By appeal to the Supreme Court of Utah, (R. 0045);

By setting out in writing the Points upon which they relied for a reversal of the judgment of the Third District Court; by written Briefs and oral argument in support of the claimed error. (R. 0050 to 0057);

By a printed Petition for a Rehearing, and a Brief in support thereof. (R. 0060 to 0065.) The Petition for a Rehearing was denied on December 28, 1960. (R. 0066.)

REASONS FOR GRANTING WRIT

This case involves the following questions:

1. May the Corporation of the President of the Church of Jesus Christ of Latter-day Saints, acting through its owned Zions Securities Corporation, lawfully give several hundred thousand dollars toward the purchase of a site for a building for the

United States, when such money or property, according to its Articles of Incorporation, is being held by it for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, for the "benefit of religion, for works of charity and for public worship."

2. May the Supreme Court of Utah make Findings of Fact contrary to the allegations of the pleadings without evidence to support the same without offending against that provision of the Constitution which provides that:

> "No person shall be deprived of his property without due process of law."

3. May a valid contract be entered into for the sale of the property of Salt Lake City to Zions Securities Corporation when the members, except one, of the City Commissioners of Salt Lake City are members of the Church of Jesus Christ of Latter-day Saints, and as such are benficiaries of the money which is to be used for the purchase of the City property, where, as alleged in the Complaint, "one of the cardinal principles of the Church of Jesus Christ of Latter-day Saints is that its members shall comply with the announced desires of the leaders of that Church, and particularly such desires of its President and his Counsellors. . . . That when it became known that the Corporation of the President of the Church of Jesus Christ of Latter-day Saints and its leaders of said Church desired to purchase the City property as a site for a Federal Building, the Commissioners proceeded to have said property appraised . . . so that a sale might be made to defendant Zions Securities Corporation so the same might in turn be sold to the United States."

4. May the General Services Administration of the United States lawfully enter into a contract for the purchase of a site for the construction thereon of a Federal Building when he

has actual knowledge that such property is held in trust for religious purposes, and the attempt to devote the same to purchase a site for a Federal Building is being litigated?

5. May the President of the Church of Jesus Christ of Latter-day Saints, having organized himself a Corporation Sole, lawfully own and control a corporation for profit and use its assets to assist in the purchase of a site for a Federal Building?

This Court has heretofore held, contrary to the opinion of the Supreme Court of Utah rendered in this case, that the funds paid by the members of the Church of Jesus Christ of Latter-day Saints may not be used for any purpose except for their benefit. The question of how such money may be used was litigated in the Supreme Court of the Territory of Utah and in this Court in the following cases:

United States v. The Sole Corporation, The Church of Jesus Christ of Latter-day Saints, et al., 5 Utah 361;

United States v. Church, 6 Utah 43;

United States v. Church, 8 Utah 310;

Church of Jesus Christ of Latter-day Saints v. United States, 136 U.S. 1, 34 L.Ed. 481, 140 U.S. 665, 35 L.Ed. 592.

United States v. Church of Jesus Christ of Latter-day Saints, et al., 150 U.S. 145, 37 L.Ed. 1033.

The litigation culminated in a lengthy, well considered opinion rendered by the Supreme Court of the Territory of Utah in the case of *United States v. Church*, reported in 8 Utah 310, supra, which was, so far as material here, affirmed by the case of *United States v. Church of Jesus Christ of Latter-day Saints*, 150 U.S. 145, 37 L. Ed. 1033, supra. It is there held that the funds paid by the members of the Church of Jesus Christ of Latter-day Saints to the Church may not lawfully be used

for the support of the common schools because some of the pupils attending such schools are not members of such Church.

Due process of law or the law of the land was thus defined by Webster in the case of *Dartmouth College v. Woodward*, 4 Wheat (U.S.) 518, 4 L. Ed. 629:

> "By the law of the land is most clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, property and immunities under the protection of the general rules which govern society."

This statement has frequently been cited with approval by both state and federal courts. The Judgment of the trial court and the Opinion of the Supreme Court of Utah rendered in this case offends against the doctrine of such cases.

In the case of *United States v. Mississippi Valley Generating Co.*, No. 26, decided on January 9, 1961, not yet reported, this Court recognizes the effect of an attempt to make a valid contract by parties where there is present a conflict of interests. The authorities teach that the common law condemns a contract made by parties where there is a conflict of interest.

In *Vol. 2, Dillon on Municipal Corporations, Sec. 773*, page 1143, it is said:

> "At common law and generally under statutory enactment it is now established beyond question that a contract made by an officer of a municipality with himself or in which he is interested is contrary to public policy and tainted with illegality, and this rule applies whether such officer acts alone on behalf of the municipality or as a member of a board or council."

The total members of the Church of Jesus Christ of Latter day Saints was recently reported to be 1,775,000. They reside

in various parts of the United States and in foreign countries. The Corporation of the President of the Church also owns and controls property in various of the States of the United States and in foreign countries. Most, if not all, other religious organizations are owners of property held in trust and interested in the questions presented for determination in this Petition for a Writ of Certiorari. It is a matter of public interest to know whether a corporation sole, organized for religious purposes, may lawfully engage in business for profit, and whether such a corporation sole may devote money or property held by it to purchase a site for a Federal Building.

This is the only court that can determine the questions here sought to have decided which will be binding through the United States.

CONCLUSION

It is respectfully submitted, for the reasons herein asserted, that this Petition for a Writ of Certiorari be granted.

BURTON W. MUSSER
ELIAS HANSEN

721-26 Continental Bank Building
Salt Lake City 1, Utah

Counsel for Petitioners.

APPENDIX "A"

IN THE SUPREME COURT OF THE STATE OF UTAH

JESSE B. STONE,
Plaintiff and Appellant,

v.

SALT LAKE CITY, et al., CHAMBER OF COMMERCE OF SALT LAKE CITY, et al., ZIONS SECURITIES CORPORATION, and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation sole,
Defendants and Respondents.

LYNN FAUSETT and FIAMETTA FAUSETT,
Petitioners in Intervention and Appellants.

Case No. 9268

CROCKETT, Chief Justice:

The plaintiff, Jesse Stone, brought action to enjoin Salt Lake City from selling and conveying two parcels of real property. One is the old Public Safety Building located at First South and State Streets in downtown Salt Lake City, which it proposes to sell to the United States government as a site for a new Federal Building. The other is the Forest Dale Park and Golf Course, a tract of about 65 acres lying just north of 27th South along Ninth East, which it has conveyed to the Church of Jesus Christ of Latter-day Saints (commonly called the Mor-

mon Church) and hereinafter referred to as the Church,[1] as a site for a junior college.

As to the transaction involving the sale of the Public Safety Building to the federal government, the trial court granted motions to dismiss in favor of all defendants, the Church, Zions Securities Corporation, the Chamber of Commerce and Salt Lake City. As to the other transaction, involving the sale of the Forest Dale Park to the Church, it granted motions to dismiss in favor of all defendants except Salt Lake City. This appeal is from those orders. We consider the two transactions separately.

THE FIRST CAUSE OF ACTION:

In 1959 the federal government had announced its intention to construct a new Federal Building in Salt Lake City and was considering possible locations. It apears that the Salt Lake City Chamber of Commerce and persons representing the interests of the Church were desirous of cooperating with the federal government to obtain a suitable site for the building in downtown Salt Lake City rather than have it built upon land already owned by the government on the Fort Douglas Military Reservation at the eastern outskirts of the city.

Zions Securities Corporation, a corporation wholly owned by the Church, attempted to purchase the Lafayette school building and grounds at North Temple and State Streets in downtown Salt Lake City as a site for the building. Burton W. Musser, one of the attorneys for the plaintiff in this action, brought an action to enjoin the school board from selling that property on some of the grounds present in part in this suit. Following the filing of that case it appears that the project was

[1]The legal form by which the Church holds property is a corporation sole known as the Corporation of the President of the Church of Jesus Christ of Latter-day Saints.

held in abeyance and that it was decided that it would be better to locate the new Federal Building upon property owned by the City at First South and State Street which housed the City's somewhat antiquated public safety building and a fire station.

The City Commission thereupon scheduled a public hearing to consider the proposed sale of that property. A few weeks later it passed a resolution declaring the existing buildings to be inadequate and obsolete for the needs of the City and advertised for bids to sell it. In response thereto the City received but a single bid, submitted by the defendant Chamber of Commerce, which was accepted by the City. The bid stated that it was made, "for the purpose of delivering the title and possession of said property to the General Services Administration of the United States Government for the construction of a new Federal Building thereon."

The attack on the propriety of the sale of the Public Safety Building is on these grounds:

A. That the Chamber of Commerce is acting for the Church and using money which the latter collected and holds in trust for religious and charitable purposes only.

B. That in attempting to control the location of the Federal Building the Church is violating the Utah Constitutional provision for the separation of church and state.

C. That because a majority of the five city commissioners are members of the Church the proposed transaction is void.

D. That the purported sale by the City was not made in accordance with proper procedures and by ordinance as required by law.

As to A: that the funds collected by the Church must be used for religious and charitable purposes the plaintiff points

to the articles of incorporation of the Church (The Corporation of The President):

> "Second: The object of this corporation shall be to acquire, hold and dispose of such real and personal property as may be conveyed to or acquired by said corporation for the benefit of the members of the Church of Jesus Christ of Latter-day Saints, a religious society, for the benefit of religion, for works of charity and for public worship. . . ."

He urges his rights both as a contributor to such funds and as a member of the class to be benefited by the proper expenditure thereof; and also urges the rights of other members of the Church and of the public similarly to be benefited. We do not regard the disputed point as to whether the stated purposes are limited to members of the Church or not as being of controlling importance.

It is significant that the plaintiff does not claim that there was any express trust or any condition or restriction placed upon the funds he contributed to the Church. They were simply donated to it and it must be assumed that they were given for the general purposes for which the Church exists. The argument that the money it collects must be used for the purposes stated in its articles of incorporation, ". . . for the benefit of religion, for works of charity and for public worship" may have some merit in that there is an obligation that they ultimately be applied to the purposes for which the corporation exists and for which the funds were donated. But it is obvious that all of the funds the Church collects would not be disbursed immediately and directly for such purposes. It is but common sense and common knowledge that there is need for the exercise of management of such funds for the ultimate accomplishment of the purposes stated. How this is to be done to best serve those objectives is for those in charge of the management of the

Church to decide. It may well entail the keeping of collected funds in savings accounts, bonds, real estate or any type of investment which, in the judgment of those in charge, best suits that purpose.

In connection with the plaintiff (or others similarly situated) donating money to any such an organization, this is to be observed: it is only reasonable to assume that one making such contributions is aware of the controlling authority and of the manner in which the institution is managed. If he does not desire to entrust the management of his money to it, he has the privilege of keeping it and making such disposition thereof as he desires; or in giving it, he may impose conditions of trust which he could require the grantee to agree to in accepting the money. But if he fails to do so, by his act of donating his money he manifests his decision to entrust the control and disposition of his funds to the Church and those who manage it. And the donor has no right to retrieve, control, or direct the manner in which the money so given shall be used merely because he has made such contributions to the Church, or because he is a member of the class which may be benefited by the carrying out of its purposes. This is in accord with the majority of the authorities, and what we believe to be the better considered view of the law.[2]

The fact is further that the articles of incorporation of the Church (The Corporation of the President) are fashioned consonant with the above conclusion. In the same paragraph, Second, upon which the plaintiff relies and from which he extracts the language hereinabove quoted relating to its religious and charitable purposes, also contains the following:

---

[2] Wemme v. Noyes (Or.) 195 P.602; Clark v. Oliver, 91 Va. 421, 22 S.E. 175; Restatement of Trusts 2d, § 391; Dickey v. Volker, 11 S.W.2d 278, 62 A.L.R. 858.

> "... and this corporation shall have the power, without any authority or authorization from the members of said church ... to grant, sell, rent, mortgage, exchange, or otherwise dispose of any part or all of said property."

Plaintiff's claim B: that the transaction is in violation of our constitutional provision requiring the separation of church and state rests upon Sec. 4, Art. 1, of the Utah Constitution:

> "There shall be no union of church and state, nor shall any church dominate the state or interfere with its functions."

It is argued that the Church, directly or through its arm, Zions Securities Corporation, in purchasing said property for the purpose of turning it over to the federal government, is attempting to control the location of the Federal Building and thus intrude into the affairs of the government. Assuming that the Church's purpose in obtaining this property was to sell it to the federal government, we fail to see how this can be construed as a violation of the above constitutional provision. There is no doubt that the Church can legally purchase and sell property. And just as any other property owner, it can use any legitimate means to persuade a prospective buyer to purchase from it. The transaction does not take on a taint of illegality merely because the solicited purchaser happens to be the federal government or its agency. Its officials are charged with the duty of deciding what property it will purchase and where the Federal Building will be located and are solely responsible for the performance of such duties. No charge is made that there was involved any bribery, collusion, undue influence or other impropriety except the mere fact that the parties involved are the Church and the federal government. To except a court to infer from that fact alone that there must be some improper influence exerted upon the latter would involve farfetched and unrealistic

conjecture. We are in accord with the view taken by the trial court that in the absence of any specific charge of impropriety other than the nature and relationship of the parties that there is nothing shown which would justify a conclusion that the transaction involved any attempt on the part of the Church to "dominate the State or interfere with its functions."

In support of C: that the contract is void because a majority of the five city commissioners are members of the Church, plaintiff cites Section 10-6-38, U.C.A. 1953, which makes void any contract where an officer of the city ". . . shall be directly or indirectly interested . . . in the purchase of any real estate or other property. . . ." belonging to the city. He urges that merely because of membership in the Church they should be deemed to have an interest in the transaction. This is commonly referred to as the "conflict of interests rule" and has been held to make a contract void if the Commissioner is a stockholder in a corporation contracting with the City.[3] But the rule is not applicable here because our situation falls well outside of that orbit. As pointed out above, membership in the Church does not give an individual ownership or control over any of its funds or property. This applies to the commissioners the same as it does to the plaintiff. The commissioners as members of the Church may have a remote expectancy of participating in its beneficences under particular circumstances. But this is a matter of grace to be determined by the Church management, and is not a matter of right. No matter how great the benefit to be derived, or the detriment to be suffered by the Church in this transaction, neither would redound to the benefit or the detriment of these commissioners as individuals. Thus the "conflict of interest" reason for forbidding contracts between the city and officials interested in the subject matter does not exist here because it is

---

[3] Foster v. Cope, 60 N.J.L. 78, 36 Atl. 1089.

uniformly held that the "interest" referred to in such a statute means that the official must have a "personal and pecuniary interest" in the subject matter.[4]

Neither are we impressed with the contention that because of their membership in the Church the commissioners would be subject to the control of its authority and thus should be disqualified to act under the statute just discussed. To assume that they would betray their public trust and subvert to interests of the City to those of the Church would require the conjecture that they are bent on wrongdoing and violating their oaths of office. Such conjection the law will not indulge, but in the absence of a specific charge to the contrary, right conduct is always presumed.

Upon this point of "conflict of interest" the extension of such a rule under the circumstances here shown would go far beyond the evil against which it was directed and likely would create evils of its own. Merely being a lay member of the Church could result in placing a handicap upon Church members as public officials: (a) by limiting their proper actions as such officials; (b) and by limiting the rights of entities they might represent; and (c) by limiting the prerogatives of churches to deal with public entities whose officials happened to be its members. Suffice it to say that we do not regard mere membership in the Church under the circumstances presented her as rendering the commissioners "directly or indirectly interested" in the purchase of such real estate within the meaning of Sec. 10-6-38, U.C.A. 1953, which makes such a transaction void.

In regard to D: the charge that the City did not follow proper procedure and did not by ordinance dispose of this

[4]See McQuillin, Municipal Corporation § 29.97, p. 390; 63 C.J.S. Mun. Corp. § 991.

property, this is to be said: the City is endowed with general powers to buy and sell property for its own benefit. Section 10-8-2, U.C.A. 1953, provides:

> "They may provide for payment of debts and expenses of the corporation; may purchase, receive, hold, sell, lease, convey and dispose of property, real and personal, for the benefit of the city . . . and may do all other things in relation thereto as natural persons. . . ."

We are aware that there is dicta in two early cases, McDonald v. Price[5] and Ogden City v. Bear Lake and River Waterworks and Irrig. Co.,[6] suggesting that the above statute does not give a city an unlimited right to convey property; and also in the recent case of Rowley v. Milford[7] that in order to vacate and sell part of its park the City of Milford must pass an ordinance. However, it should be noted that the McDonald and the Ogden City cases just referred to dealt with streets and alleys, and that the Rowley case dealt with a park; and that there is a specific statute, Section 10-8-8 U.C.A. 1953 which confers powers upon cities in relation to "*streets, alleys*, avenues, boulevards, sidewalks, *parks*, airports, and public grounds" and authorizes a city to vacate them by ordinance. The familiar and universally recognized rule is that general terms following specific terms are interpreted to mean things of like character.[8] While those cases are sound as to streets and parks, we can see nothing in that statute which would require the sale of the Public Safety Building to be considered as coming within its terms. Nor do we find any express provision in our statutes which would prohibit the procedure followed here.

---

[5] 18 Utah 464, 146 P. 550.

[6] 16 Utah 440, 52 P. 697.

[7] 10 Utah 2d 299, 352 P.2d 225.

[8] See Hatch v. Public Service Comm., 3 Utah 2d 277, P.2d 809; and authorities therein cited.

We are entirely in accord with the contention that it is necessary and proper that sales of public property be openly and fairly conducted. The essential of procedural requirements of that character is that there be notice, a reasonable opportunity for those interested to appear and be heard, and that fairness in the procedure in connection with the sale be observed. While the City may have followed some other method than it did, its procedure in publicizing the proposal, holding a public hearing, adopting a resolution declaring the property obsolete and soliciting bids for its sale encompasses the basic elements of propriety in dealing with such public business. There is no allegation that there was any secrecy, subterfuge, fraud or other impropriety, and we therefore see no basis upon which the transaction could be declared invalid upon the ground under consideration.

The foregoing discussion indicates that the first cause of action, as to the Public Safety Building transaction, was properly dismissed as to all principal defendants. This renders it unnecessary to consider an additional and collateral contention that the Chamber of Commerce was an indispensable party in that cause of action.

THE SECOND CAUSE OF ACTION:

The cause of action relating to the Forest Dale Park was dismissed in favor of the defendants, Zions Securities Corporation, the Chamber of Commerce, and the Church, but was not dismissed as to Salt Lake City. Since the latter two parties, the Church and Salt Lake City were the only parties to the transaction, the dismissal in favor of the other two defendants was proper.

Inasmuch as the trial court refused to grant the City's motion for dismissal, and the City has not cross-appealed from

that ruling, leaving that cause of action pending before the court, we now confront the question whether the Church is a necessary party to that cause of action.

In his second cause of action the sale of the Park to the Church is attacked on two of the grounds hereinabove discussed which related to the first cause of action, that is, C, that the city commissioners were members of the Church and D, that the sale was not made by proper procedure and by ordinance.

In considering whether the granting of the motion to dismiss the Church from the second cause of action was proper, it is to be borne in mind that one should be regarded as a necessary party to a law suit if he has rights or interests involved in the subject matter in such a way that his presence is essential to a full, fair and equitable determination of his rights and those of other parties to the suit.[9] It has been held, and we think correctly so, that this includes the grantees of deeds, the validity of which is under attack. If the court were to determine that the City was without power to execute the deed it made to the Church, that would certainly affect the latter's rights as a grantee. It is therefore obvious that the Church should be regarded as a necessary party to the second cause of action and that the motion to dismiss as to it should have been denied.

The final point we turn to is the contention on behalf of Lynn and Fiametta Fausett that they should have been allowed to intervene in the action. In this decision we have treated the plaintiff Stone as having all the rights claimed by the Fausetts and have addressed the issues in the same manner. Inasmuch as their status and their rights would not have been different than this, we can see no useful purpose in making any determination of that ruling now. However, upon remand, if they desire to be parties as to the second cause of action, there is no reason why they should not be joined.

As to the first cause of action, the Public Safety Building transaction, the judgment of dismissal in favor of all defendants is affirmed.

As to the second cause of action, the Forest Dale Park transaction, the judgment of dismissal in favor of all parties is affirmed, except as to the Church, and as to it the order is reversed and the case is remanded for such further proceedings as may be deemed proper. No costs awarded.

WE CONCUR:

.....

Lester A. Wade, Justice

.....

Roger I. McDonough, Justice

.....

E. R. Callister, Jr., Justice

HENRIOD, Justice: (Concurring in result)

I concur in the result, but reserve any opinion as to the legality of the procedure followed by the City in its sale or attempted sale of the park property. It appears that parks are governed by Section 10-8-8, U.C.A. 1953, authorizing only that they be *vacated*. Whether any such statute was considered or followed or was applicable before the sale or attempted sale is not clear.

I do not agree with the main opinion's statement that "in the recent case of Rowley v. Milford that in order to vacate and *sell* part of its park the City of Milford must pass an ordinance." That question was not before us in that case, and we simply held that the supplemental answer sought to be filed may have stated a defense to part of the relief prayed for, in the light of facts occurring after the suit was filed showing compliance with the statutes justifying a subsequent sale. (Emphasis ours.)

FII

No. 35[illegible]

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1941

JESSE B. STONE, LYNN LAUSELL and
HAMELIA LAUSELL,

Petitioners,

vs.

SALT LAKE CITY, a municipal corporation, et al., [illegible] BLACK
[illegible], JOEL J. CHRISTENSON, J. C. ROMNEY,
[illegible] GEURTS and L. K. PERCY, as Commissioners
CHAMBER OF COMMERCE OF SALT LAKE CITY,
[illegible] GUS P. BACKMAN, as Secretary, ZIONS SECU-
RITIES CORPORATION, a corporation, and THE
CORPORATION OF THE PRESIDENT OF THE
CHURCH OF JESUS CHRIST OF LATTER DAY
SAINTS, a corporation sole,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF UTAH

BRIEF FOR ALL OF THE ABOVE NAMED
RESPONDENTS IN OPPOSITION

FRANKLIN RITER
[illegible] Building
Salt Lake City, Utah

ARTHUR H. NIELSEN
[illegible] Building
Salt Lake City, Utah

Attorneys for Respondents

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statement	3
Argument	5
Conclusion	12

CASES CITED

Bottone vs. Lindsley, 170 F. 2d 705, Cert. Den. 69 S. Ct. 810, 336 U.S. 944, 93 L. Ed. 1101 9

Cadman Memorial Congregational Society vs. Kenyon, 306 N. Y. 151, 116 NE 2d 481 8

Central Land Co. vs. Laidley, 159 U.S. 103, 16 S. Ct. 80, 40 L. Ed. 91 11

City of Louisville vs. Cumberland Tel & Tel Co., 155 F, 725, 84 CCA 156, App. Dism. 212 U.S. 588, 29 S. Ct. 690, 53 L. Ed. 662 7

Clark vs. Oliver, 91 Va. 421, 22 S.E. 175 9

Dickey vs. Volker, 11 S. W. 2d 278, 62 A. LR. 858 9

Fallbrook Irrigation District vs. Bradley, 17 S. Ct. 56, 164 U. S. 152, 41. L. Ed. 368 6

Feldman vs. United States, 64 S. Ct. 1082, 322 U. S. 487, 88 L. Ed. 646 6

Gethsemane Lutheran Church vs. Zacko, 235 Minn. 469, 92 N.W. 2d 905 11

Page

St. Anthony Roman Catholic Church vs. Penn. R. Co., 207 F. 897, 125 CCA 629, App. Dism, 237 U.S. 575, 35 S. Ct. 729, 59 L. Ed. 1119 7

Spies vs. Illinois, 123 U.S. 131 6

Thorington v. Montgomery, 13 S. T. 394, 137 U. S. 490, 37 L. Ed. 252 9

Tracy vs. Ginzberg, 205 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91 8

United States vs. Cruikshank, 92 U. S. 542, 23 L. Ed. 588 7

United States Tel Co. of Penn. vs. Penn. Public Utilities Com., 60 S. Ct. 411, 309 U. S. 30, 84 L. Ed. 563 9

Watson vs. Jones, 13 Wall. 679, 20 L. Ed. 666 8

Wemme v. Noyes (Or.) 194 P. 602 9

CONSTITUTION AND STATUTES

Fifth Amendment to the Constitution of the United States 5, 6

Utah Code Annotated 1953, Section 10-6-38 4, 6, 10

TEXTS

12 Corpus Juris, Page 1217, Sec. 992 7

16 A Corpus Juris Secundum, Page 720, Sec 603 7

Fletcher CYC Corporations, Permanent Edition, Page 158-160, Section 43 10

Restatement of Trusts 2d., Section 391 9

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1961

JESSE B. STONE, LYNN FAUSETT and FIAMETTA FAUSETT,

Petitioners,

vs.

SALT LAKE CITY, a municipal corporation; J. BRACKEN LEE, JOE L. CHRISTENSON, L. C. ROMNEY, T. I. GEURTS and J. K. PIERCEY, its Commissioners; CHAMBER OF COMMERCE OF SALT LAKE CITY, and GUS P. BACKMAN, its Secretary; ZIONS SECURITIES CORPORATION, a corporation; and THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a corporation sole,

Respondents,

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF UTAH

BRIEF FOR ALL OF THE ABOVE NAMED RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Utah is reported in 356 Pac. (2d) 631, but is not yet reported in the Utah reports. A copy of such opinion is attached to petitioners' petition as Appendix A.

JURISDICTION

The judgment of the Supreme Court of Utah was entered on November 2, 1960. A petition for rehearing was filed by the petitioners. This petition was denied December 28, 1960. Whereupon the judgment became final.

QUESTIONS PRESENTED

I. The comprehensive question before the court is whether there appears upon the face of the record a constitutional or federal question reviewable by this court upon the petition filed herein. Involved in the consideration of the foregoing question are the following:

(a) Does the Fifth Amendment to the United States Constitution have any application to create a federal question in this case?

(b) Will this court review the judgment of the Utah Supreme Court when it appears from the face of the record that the controversy involved does not involve any action by the State of Utah or any of its agencies with respect to any property rights of the petitioners, or with respect to any issues in the case?

(c) Will this court review the judgment of the Utah Supreme Court in adjudicating property rights solely as between individuals and domestic corporations?

(d) Will this court review the judgment of the Utah Supreme Court when the basic substance for such review, as disclosed by the record, resolves itself into a mere assertion of error on the part of the Utah Supreme Court in construing state statutes and applying domestic law?

(e) Will this court review the judgment of the Utah Supreme Court in adjudicating that the City Commissioners of Salt Lake City were not disqualified, by reason of conflict of interest under Section 10-6-38, UCA 1953, to enter into the transaction complained of?

II. Will this court review the judgment of the Supreme Court of Utah when it appears from the face of the record:

1. The Petitioner Jesse B. Stone has no property or other interest which was or could be affected by the judgment of the Utah Supreme Court.

2. The Petitioners Lynn Fausett and Faimetta Fausett are not, and have never been, parties to this action.

STATEMENT

This action was commenced by Petitioner Jesse B. Stone. In his complaint he alleged that he, "for a number of years, was a member of and a tithe payer and contributor of a substantial amount of money to the Church of Jesus Christ of Latter-day Saints, and as such tithe payer and contributor has an interest in the trust fund held by Defendant Zions Securities Corporation and Defendant Corporation of the President of the Church of Jesus Christ of Latter-day Saints." It is conceded that when he brought his action he was not a member of the Church. At the time the motions of the defendants, respondents herein, to dismiss came on for hearing before the trial court, Petitioners Lynn Fausett and Fiametta Fausett presented to the trial court a motion for leave to intervene in said cause, alleging they were members and tithe payers of,

and contributors to, said Church. They adopt the allegations in Stone's complaint.

The trial court sustained the defendants' motions to dismiss Stone's first cause of action and stated in its judgment of dismissal that in view of such determination of the issues it "becomes unnecessary to pass upon the motion of Fausetts for leave to intervene." There has been no other disposition of that motion.

The complaint attacks the sale by Defendant Salt Lake City to Defendant Salt Lake City Chamber of Commerce of property then owned by the City to house the Police and Fire Departments of the City, located at First South and State Streets in Salt Lake City. This property, in turn, is to be conveyed to the United States for a site for a federal office building.

It is alleged that such transaction was illegal and void:

First, the Defendant Zions Securities Corporation was acting as the agent of the Corporation of the President of the Church of Jesus Christ of Latter-day Saints in advancing money with which to purchase a site to erect a federal building; that such money constituted a trust fund to carry on the purposes of the Corporation of the President; that to use the trust funds to assist in obtaining the desired site for a federal building was beyond the scope of the corporate powers of the Corporation of the President.

Secondly, the members of the City Commission, who authorized the sale, were members of the Church of Jesus Christ of Latter-day Saints, and as such, were disqualified to so sell the city's property, under Section 10-6-38, UCA 1953, which provides that "no officers of any municipal

corporation shall be directly or indirectly interested in any contract . . . . . (made by city)." It is claimed that mere membership in that Church brought the city commissioners within the ban of said section.

Thirdly, that the use of trust funds for the purchase of a federal building site would result in depriving plaintiff of his property rights in the alleged trust funds without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

In fairness to the court it should be stated that the transaction complained of by petitioners was consummated, and the United States held title to the entire site involved, before the case was argued to the Utah Supreme Court.

ARGUMENT

From the face of petitioners' complaint (first cause of action) the following elements are relied upon to state a cause of action:

1. The Corporation of the President and Zions Securities Corporation hold funds which are to be used to carry on the corporate purposes of the first named corporation.

2. These corporations have entered into a transaction wherein they will use some of such funds to assist in acquiring a site for a federal office building and such use is outside the scope of the corporate purposes of the Corporation of the President.

3. As a former or present member of the Church of Jesus Christ of Latter-day Saints petitioners have an

interest in such funds and seek to prevent their use for the purpose above stated.

4. To use such funds for such purpose would deprive petitioners of property without due process of law under the Fifth Amendment to the United States Consitution.

5. The City Commissioners of Salt Lake City were disqualified to sell the City's property to the Salt Lake City Chamber of Commerce or Zions Securities Corporation because. Being members of said Church, they had an interest in the transaction contrary to Section 10-6-38, UCA 1953.

The judgment of the Utah Supreme Court holds that petitioners have no beneficial interest in the funds of either corporation and could not control their use. Said court further held that membership in said Church did not disqualify the City Commissioners of Salt Lake City from disposing of the City's property in the transaction here involved; said commissioners have no pecuniary interest in the subject matter, and so had no conflict of interest.

I. THE FACE OF THE RECORD DISCLOSES NO FEDERAL QUESTION TO BE RESOLVED.

(a) The Fifth Amendment to the United States Constitution has no application in this case. It is well settled that the first ten Amendments "were not intended to limit the powers of the state governments in respect to their own people, but to operate on the national government alone." Spies vs. Illinois, 123 US 131, cited in Fallbrook Irrigation District vs. Bradley, 17 S. Ct. 56, 164 U. S. 142, 41 L. Ed. 369. In Feldman vs. United States, 64 S. Ct. 1082, 322

U. S. 487, 88 L.-Ed. 1408, Rehearing denied 65 S. Ct. 26, 323 U. S. 811, 89 L. Ed. 646, it is stated: "But for more than 100 years since Barron vs. Baltimore, 7 Pet. 243, one of the settled principles of our court has been that these Amendments (Fourth and Fifth) protect only against invasion of civil liberties by the Government, whose conduct they alone limit."

(b) The face of the record shows that neither the State of Utah, nor any of its agencies, have in any manner sought to deprive petitioners of any property or rights in property. The most that can be said is that the courts to which petitioners resorted held adversely to their claim of interest in the funds held by the Church corporations. The law is well settled, as stated in 12 C. J. Page 1217, Section 992, also 16A C. J. S. p. 720, Section 603: "The constitutional guaranties of due process are directed against the taking of property by, or under the authority of, the State or Federal Government, and hence have no application to taking by individuals or corporations which is not sought to be justified under legislative authority. The Fourteenth Amendment adds nothing to the rights of one citizen against another, but simply furnishes a guaranty against any encroachment by the State on the fundamental rights which belong to every citizen." United States vs. Cruikshank, 92 U. S. 542, 23 L. Ed. 588: "The Fourteenth Amendment prohibits a state from depriving any person of life, liberty or property without due process of law; but this adds nothing to the rights of one citizen against another." We cite also St. Anthony Roman Catholic Church vs. Penn. R. Co., 207 F. 897, 125 CCA 629, appeal dismissed, 237 US 575, 35 S. Ct. 729, 59 L. Ed. 1119. City of Louisville vs. Cumberland Tel. and Tel. Company,

155 F. 725, 84 CCA 156, appeal dismissed, 212 U. S. 588, 29 S. Ct. 690, 53 L. Ed. 662.

(c) Where the state court proceeds to adjudicate property rights, with the proper parties before it, its judgment, though erroneous, does not constitute a deprivation of property without due process of law. Tracy vs. Ginzberg, 205 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91. In that case the court held that even though it were of the opinion, upon the record, that the money sued for by plaintiff belonged to him, while the state supreme court held to the contrary, "Still it could not be affirmed that the latter (plaintiff) had, within the meaning of the constitution, and by reason of the judgment below, been deprived of his property without due process of law. Under the opposite view every judgment of a state court, involving merely ownership of property, would be brought here for review —a result not to be thought of."

However, the law is clear that no trust arises out of mere contributions to a religious society or corporation to carry on its purposes. The rule is stated in Cadman Memorial Congregational Society vs. Kenyon 306 NY 151, 116 NE 2d 481, as follows:

> "Gifts to religious or charitable corporations to aid in carrying out the purposes for which they are organized, either by expending the prinicipal of a bequest or the income of a bequest to be invested in perpetuity, does not create a trust in any legal sense."

To the same effect is Watson vs. Jones, 13 Wall. 679, 20 L. Ed. 666.

(d) The constitutional guaranty is a matter of sub-

stance, not of form. It does not guarantee against judicial error, and it does not provide any guaranty against unjust or erroneous decisions. Such error does not present a federal question. United States Bell Telephone Company of Pennsylvania vs. Penn. Public Utilities Commission, 60 S. Ct. 411, 309 U. S. 30, 84 L. Ed. 563; Bottone vs. Lindsley 170 F. 2d 705, Cert. Den. 69 S. Ct. 810, 336 U. S. 944, 93 L. Ed. 1101.

Interpreting and applying domestic law and the Articles of Incorporation of the Corporation of the President, the Utah Supreme Court decided that petitioners had no interest in the funds of the Corporation of the President or Zions Securities Corporation. In support thereof is cited in the following authorities: Wemme v. Noyes (Or.) 194 P. 602; Clark v. Oliver, 91 Va. 421, 22 S. E. 175; Restatement of Trusts 2d, Section 391; Dickey v. Volker, 11 S. W. 2d 278, 62 A. L. R. 858. The most that could be said against said judgment is that it is not in harmony with other authorities. It certainly presents no federal question.

Involved in a consideration of the present proposition is the charge by the petitioners of misuse of corporate funds. The use of corporate funds, whether proper or improper, does not involve a federal question. Only domestic law, as relates to corporations, is involved. In Thorington vs. Montgomery, 13 S. Ct. 394, 147 U. S. 490, 37 L. Ed. 252, it was held that the good faith of a transaction by which title to the property forming the subject of the controversy was transferred by the taxing unit at tax sale to plaintiff in error did not involve a federal question.

Petitioners allege that the Corporation of the President owns all of the capital stock of Zions Securities Corporation, except a few shares, and that, in the transaction complained of, the latter was acting as agent for the former. Zions Securities Corporation is an ordinary business corporation, organized under the laws of Utah. The Corporation of the President is organized under the laws relating to corporations sole. The allegations of the complaint are not sufficient to warrant disregard of the separate corporate entity of Zions Securities Corporation. 1 Fletcher CYC Corporations, Permanent Edition, Page 158-160, Section 43:

> "It is not enough that the shareholders and officers or managers in the corporation are identical, and the mere fact that one owns all the stock of the other, or substantially all, is not enough to warrant disregard. Common officers and management is not incompatible with separate entities, or conclusive of identity. Even active management for a proper object does not always indicate identical entities. . . . A difference in corporate powers, the held corporation having power to do that which is beyond the powers of the other is an obstacle to the complete disregard of the former's entity."

This feature does not involve a federal question, only domestic law.

(3) The judgment of the Supreme Court that the members of the City Commission of Salt Lake City, who authorized the sale of the city property in the action here involved, were not disqualified to so do by a conflict of interest, contrary to Section 10-6-38 UCA 1953, does not involve a federal question.

The judgment merely construes a state statute with

no element of constitutional law involved. In Central Land Company vs. Laidley, 159 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91, the court said:

> "It is the peculiar province and privilege of the state courts to construe their own statutes; and it is no part of the function of this court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligations of contracts. The power delegated to us is for the restraint of unconstitutional legislation of the state and not for the correction of alleged errors committed by their judiciary."

II. NEITHER OF THE PETITIONERS HAS ANY STANDING TO QUESTION THE USE OF THE CORPORATE FUNDS BY RESPONDENTS CORPORATION OF THE PRESIDENT OR ZIONS SECURITIES CORPORATION.

1. As to Petitioner Jesse B. Stone. He alleges that he was once a member of, and a tithe payer and contributor to, the Church of Jesus Christ of Latter-day Saints, and, as such tithe payer and contributor, he has an interest in the funds of said corporations which came from said contributions. The rule on this subject is well stated in Gethsemane Lutheran Church vs. Zacko, 235 Minn. 469, 92 NW 2d 905, as follows:

> "The usual rule applicable to religious societies is that the rights of a member are dependent on the continuance of his membership and when he ceases to be a member his rights and beneficial interests in the society's property ceases, and he no longer has standing to sue in relation thereto. Nor does the fact that plaintiff may have made contributions to this association give him any right, after his withdrawal, to sue in relation to its affairs."

2. As to Petitioners Lynn Fausett and Fiametta Fausett. These petitioners are not yet parties to this action. Their motion for permission to intervene has not been granted or denied. The trial court expressly refrained from passing upon the motion to intervene. That motion still is pending and can only be heard and disposed of when this cause is remanded to the trial court for further proceedings.

CONCLUSION

We submit that upon the face of the record no federal question is presented by petitioners. Further, the record is conclusive that neither of the petitioners has any standing to question the transaction forming the subject matter of this action. The petition for a Writ of Certiorari should be denied.

Respectfully submitted,

FRANKLIN RITER
Suite 822, Kearns Building
Salt Lake City, Utah

ARTHUR H. NIELSEN
510 Newhouse Building
Salt Lake City, Utah
Attorneys for Respondents

James L. Barker, Jr.
Dean E. Conder
Fred L. Finlinson
Homer Holmgren
Norman W. Kettner
Of Counsel